

RECEIVED AND FILED
WITH THE
N.J. BOARD OF DENTISTRY
ON 3-5-08 DA

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF DENTISTRY

IN THE MATTER OF

: Administrative Action
:
:
:
:
:
:
:
:
:
:

HERBERT A. BOTWICK, D.D.S.
License No. 22DI00758400

: FINAL ORDER
: OF DISCIPLINE
:
:
:
:
:
:
:
:
:
:

LICENSED TO PRACTICE DENTISTRY
IN THE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Dentistry upon the Board's receipt of information relating to Herbert Botwick, D.D.S. ("respondent") and his compliance with Board regulations. Following its review, the Board issued a Provisional Order of Discipline on September 17, 2007, provisionally finding respondent had engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense and had failed to comply with Board regulations by submitting claims to a third party with inaccurate information, specifically by submitting claims that did not reflect actual dates of service. The underlying conduct was set forth in a settlement agreement between Dr. Botwick and Delta Dental Plan of New Jersey in August 2000. The Provisional Order further noted that respondent had not renewed his license prior to its expiration in October 2005, and therefore, his license was administratively suspended pursuant to N.J.S.A. 45:1-7.1(b). The Provisional Order, which provided an opportunity to respond to the findings and conclusions contained in it, proposed a reprimand, a civil penalty of \$5,000, and required that respondent demonstrate readiness to reenter practice prior to seeking reinstatement of his license.

In response, Dr. Botwick, through his counsel, Paul G. Nittoly, Esq., asked the Board to modify the sanction sought by the Provisional Order. The submission stated that Dr. Botwick had retired from the practice of dentistry in or around June 2000, that the conduct underlying the settlement with Delta Dental Plan of New Jersey related to conduct that occurred between 1993 and 1997, and that Dr. Botwick had submitted the inaccurate forms to help patients obtain insurance benefits not otherwise available. Counsel stated: "Although admittedly using poor judgment to assist his patients, Dr. Botwick did not benefit financially." In arguing that respondent had an otherwise unblemished career and, given his retirement, that the conduct would not be repeated, counsel urged the Board to enter an order without civil penalties.

The deputy attorney general prosecuting the matter replied to respondent's submission. He noted that while there was a basis to sustain the order, the Board, after consideration of the assertions in counsel's letter, could exercise its discretion to reduce or eliminate the civil penalty.

The Board has fully considered this matter. The underlying conduct, that is, submission of inaccurate dates on claims to obtain coverage for patients when they are not entitled to such coverage, has repeatedly been found by this Board to be professional misconduct and a violation of Board rules. It is appropriate to sanction a licensee who engages in such conduct. The Board will sustain its provisional determination to reprimand respondent but, in light of the mitigation offered, specifically the passage of time since these events occurred, Dr. Botwick's retirement from practice, and that he is on a limited income, the Board will modify the provision for civil penalties. While still imposing a civil penalty, the penalty will only be payable should Dr. Botwick seek and obtain reinstatement of his license. If and when he makes that application, as provisionally ordered, respondent will be required to demonstrate his readiness to reenter practice. The

Board finds that this resolution is fair and consistent with the public policy to help reduce and eliminate manipulation of insurance claims to secure unwarranted benefits.

Therefore, the Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent has been licensed to practice dentistry in the State of New Jersey and has been a licensee at all times relevant to this order. Respondent placed his license on paid-inactive status for the 2001-2003 and 2003-2005 biennial periods. However, respondent failed to renew his license prior to its expiration on October 31, 2005. As a result, respondent's license is currently suspended, pursuant to N.J.S.A. 45:1-7.1(b), for failing to renew within 30 days of the expiration date of the license.

2. In or around August 2000, respondent entered into a Settlement Agreement with Delta Dental Plan of New Jersey ("Delta"), whereby he acknowledged that he had submitted claims to Delta which misrepresented dates of service in order to be paid for claims that would not have been paid had respondent provided the correct date of service. Respondent agreed to reimburse Delta \$19,041.94 related to the misrepresented submissions. Specifically, it had been alleged that from 1993 to 1997, respondent submitted fraudulent claims concerning numerous patients by misrepresenting the actual treatment dates.

CONCLUSIONS OF LAW

1. These above facts establish a basis for disciplinary action, pursuant to N.J.S.A. 45:1-21(h), in that respondent violated a provision administered by the Board, specifically having violated N.J.A.C. 13:30-8.10(b), in that respondent admitted to submitting claims to a third party payor for dental services rendered to patients in which the treatment dates did not accurately reflect the dates when the service and procedures were actually completed. The above facts also establish a basis for disciplinary action, pursuant

to N.J.S.A. 45:1-21(b), in that respondent has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

ACCORDINGLY, IT IS on this fifteenth day of March, 2008,

HEREBY ORDERED that:

1. Respondent is reprimanded, pursuant to N.J.S.A. 45:1-22, for violations of N.J.A.C. 13:30-8.10(b) and N.J.S.A. 45:1-21(h) and (b), as a result of submitting claims to a third party payor which contained treatment dates which did not accurately reflect the date when the services and procedures were actually completed and engaging in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

2. Respondent is assessed civil penalties, pursuant to N.J.S.A. 45:1-22, in the amount of \$5,000 for violations of N.J.A.C. 13:30-8.10(b). Payment of the civil penalty shall be stayed. The penalty shall become due only upon reinstatement of his license.

3. Respondent's license shall remain administratively suspended. Prior to seeking reactivation of his license, pursuant to either N.J.S.A. 45:1-7.1 or N.J.S.A. 45:1-7.3, respondent shall appear before the Board, or a committee of the Board, to discuss his readiness to reenter the practice of dentistry. At that time respondent shall be prepared to propose his plans for future practice in New Jersey.

NEW JERSEY STATE BOARD OF DENTISTRY

By: 

Maxine Feinberg, D.D.S.
Board President